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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES; <i>et al.</i> ,)	Case No. CV 85-4544
)	
Plaintiffs,)	DEFENDANTS' RESPONSE IN
)	OPPOSITION TO PLAINTIFFS'
v.)	MOTION TO ENFORCE
)	SETTLEMENT
WILLIAM P. BARR, Attorney)	
General of the United States; <i>et al.</i> ,)	Hearing Date: <u>None Set</u>
)	Time:
Defendants.)	Dept:
)	
)	

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II. INTRODUCTION

Plaintiffs return to this Court with another motion to enforce the 1997 *Flores* Settlement Agreement (“*Flores* Agreement” or “Agreement”). This time, Plaintiffs challenge the conditions and release procedures at the U.S. Department of Health and Human Services (“HHS”), Office of Refugee Resettlement (“ORR”), Homestead facility, which is an influx facility that is used by ORR to house UACs in order to avoid a backup up of minors in the custody of U.S. Customs and Border Protection (“CBP”) when ORR has exceeded its capacity to house minors at existing licensed facilities. Plaintiffs’ motion should be denied because Plaintiffs have failed to establish that ORR’s use of the Homestead facility violates the Agreement.

ORR has more than complied with its obligation to have available 210 licensed beds in the event of an influx, and in fact ORR is in the process of bringing on line approximately 20,000 licensed beds for that purpose. ORR’s use of Homestead to provide for the safe housing of minors until ORR can expeditiously release them to sponsors is entirely consistent with its obligations. Notably, Plaintiffs provide no viable alternatives for ORR to deal with an unprecedented influx of UACs such as the one that occurred over the last few months on the southwest border. Plaintiffs’ only proposed solution—a first in, first out policy after 20 days of custody—is based on entirely inapplicable rulings by this Court, and would cause more harm than benefit to the minors affected because they would be required to transfer facilities after they had made connections to other children and staff at the facility, and because it would delay their release by interfering with the ongoing efforts of their case manager at Homestead. Where, as here, Plaintiffs have not identified any violation of the terms of the Agreement, and have not presented any solution that is in keeping with the requirements of the Agreement or even that would

1 provide any benefit to any class member, this Court should deny Plaintiffs' motion
2 to enforce.

3 **III. LEGAL BACKGROUND**

4 **A. Relevant Provisions of The *Flores* Settlement Agreement**

5 The *Flores* Agreement “sets out nationwide policy for the detention, release,
6 and treatment of minors in the custody of the [former Immigration and
7 Naturalization Service’s (“INS”).]” Agreement ¶ 9. It requires that following
8 apprehension, a minor should be transferred to a “licensed program” within three
9 days, except in the case of an “influx” in which case such transfer must occur “as
10 expeditiously as possible[.]” *Id.* ¶¶ 12.A, 19. “If there is no one to whom the INS
11 may release the minor pursuant to Paragraph 14, and no appropriate licensed
12 program is immediately available for placement pursuant to Paragraph 19, the minor
13 may be placed in an INS detention facility, or other INS-contracted facility, having
14 separate accommodations for minors, or a State or county juvenile detention
15 facility.” *Id.* ¶ 12.A. In such a circumstance, “[e]very effort must be taken to ensure
16 that the safety and well-being of the minors detained in these facilities are
17 satisfactorily provided for by the staff.” *Id.*

18 An “influx” is defined as “those circumstances where the INS has, at any
19 given time, more than 130 minors eligible for placement in a licensed program under
20 Paragraph 19, including those who have been so placed or are awaiting such
21 placement.” *Id.* ¶ 12.B. To be able to respond to an influx, the Agreement requires
22 that the government “establish and maintain an Emergency Placement List of at least
23 80 beds at programs licensed by an appropriate state agency that are potentially
24 available to accept emergency placements. These 80 placements would supplement
25 the 130 placements that the INS normally has available, and whenever possible,
26 would meet all standards applicable to juvenile placements the INS normally uses.”

1 *Id.* at Exhibit 3. “In the event that the number of minors needing emergency
2 placement exceeds the available appropriate placements on the Emergency
3 Placement List,” then the government is obligated to “locate additional placements
4 through licensed programs, county social services departments, and foster family
5 agencies.” *Id.* Each year, the government must “reevaluate the number of regular
6 placements needed for detained minors to determine whether the number of regular
7 placements should be adjusted to accommodate an increased or decreased number
8 of minors eligible for placement in licensed programs. However, any decision to
9 increase the number of placements available shall be subject to the availability of
10 [agency] resources.” *Id.*

11 The Agreement also governs the release of unaccompanied minors, and to
12 whom they should or may be released. *See* Agreement ¶¶ 14-18 (describing the
13 general framework for release of unaccompanied minors from INS custody and the
14 procedures and priorities for release). The Agreement allows for continued custody
15 where the government “determines that the detention of the minor is not required
16 either to secure his or her timely appearance before the INS or the immigration court,
17 or to ensure the minor's safety or that of others.” *Id.* ¶ 14. Otherwise, the Agreement
18 contains a “general policy favoring release,” and provides the order of preference
19 for the persons into whose custody these unaccompanied minors should be released.
20 *Id.* ¶ 14. The Agreement further provides that before releasing a minor, the INS may
21 require a “positive suitability assessment[.]” *Id.* ¶ 17. This assessment “may include
22 such components as an investigation of the living conditions in which the minor
23 would be placed and the standard of care he would receive, verification of identity
24 and employment of the individuals offering support, interviews of members of the
25 household, and a home visit. Any such assessment should also take into
26 consideration the wishes and concerns of the minor.” *Id.*

B. Trafficking Victims Protection Reauthorization Act of 2008

The TVPRA was signed into law on December 23, 2008. The TVPRA requires that “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1). It further requires that, “[e]xcept in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.” 8 U.S.C. § 1232(b)(3).

The TVPRA also made clear that HHS is responsible for all placement decisions for unaccompanied alien children (“UAC”) in its custody, and provides guidelines for the reunification of UAC by HHS, including dictating the requirements for HHS to evaluate the suitability of any placement. 8 U.S.C. § 1232(c)(3). The TVPRA also requires that UAC may not be:

placed with a person or entity unless [HHS] makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.

8 U.S.C. § 1232(c)(3)(A). In some instances, HHS must conduct a home study for certain UAC before placing the UAC with a proposed custodian. 8 U.S.C. § 1232(c)(3)(B). In the event that the proposed custodian is found to be a suitable custodian to whom an unaccompanied child may be released, HHS must ensure that the potential custodian completes a legal orientation presentation addressing their responsibility to ensure the juvenile’s appearance at all immigration proceedings,

1 and to protect the child from mistreatment, exploitation, and trafficking. *See* 8 U.S.C.
2 § 1232(c)(4). The TVPRA further requires that UAC who remain in HHS custody
3 must be “promptly placed in the least restrictive setting that is in the best interest of
4 the child.” 8 U.S.C. § 1232(c)(2)(a). It delegates to the Secretary of HHS the
5 authority to make such placement decisions, considering “danger to self, danger to
6 the community, and risk of flight.” *Id.*

7 **IV. FACTUAL BACKGROUND**

8 **A. The Homestead Facility**

9
10 Through June 30, 2019, DHS has referred over 58,500 UAC to ORR this fiscal
11 year (FY), an increase of over 57 percent from FY 2018. Declaration of Jallyn
12 Sualog (“Sualog Decl.”), ¶ 28. In May 2019, ORR received over 9,000 referrals –
13 one of the highest monthly totals in the history of the UAC program. *Id.* Due to these
14 unprecedented numbers, ORR is preparing for the need for high bed capacity to
15 continue. *Id.*

16 Opening up influx shelters such as Homestead allows ORR to receive children
17 after permanent licensed bed capacity has been nearly exhausted, reducing the risk
18 of a back-up of unaccompanied children at the southern border. *Id.* ¶ 38. For
19 example, in May 2019, given the high volume of referrals of UAC to ORR’s care,
20 total operational capacity system-wide was about 97 percent full. *Id.* The Homestead
21 Job Corps facility, was activated in February 2018 to provide temporary shelter beds
22 for UAC care by HHS. *Id.* ¶ 29. This activation was done to ensure that ORR is able
23 to meet its responsibility, by law, to provide shelter for UACs referred to its care by
24 DHS. *Id.*

25 Children at Homestead live in hard-side dormitories, have access to dining
26 halls, educational classrooms, indoor and outdoor recreational spaces and fields, and
on-site medical facilities. *Id.* ¶ 30. Homestead employs 4,500 trained professionals

1 who are committed to the physical and mental welfare of the children placed there.
2 *Id.* Homestead has a medical staff of more than 160 medical professionals and
3 provides access to emergency and hospital facilities. *Id.* ¶ 31. Children arriving at
4 Homestead receive a medical examination and vaccinations within twelve hours. *Id.*¹
5 Homestead children also receive six hours of educational instruction a day, including
6 English as a second language, math, and science. *Id.* ¶ 32. UACs at Homestead
7 receive three meals a day, with an option for two snacks as well, are provided new
8 clothing and a hygiene kit, and have a dormitory bunkbed. *Id.*

9 HHS arranges for the security of UACs placed at Homestead. *Id.* ¶ 33.
10 Contractors and the Federal Protective Service (FPS) provide on-site security 24
11 hours a day, seven days a week in order to ensure the safety and well-being of UACs.
12 *Id.* A fence also surrounds the facility, and its front doors are locked. *Id.* These
13 measures are to protect UACs from threats from the public, as the facility is the site
14 of frequent protests and threats. As a secondary matter, the measures prevent escape.
15 *Id.* Homestead is distinct from a secure juvenile detention facility within the meaning
16 of Paragraph 21 of the Agreement. *Id.* It has no locked cell pods, no bars, no
17 restrictive housing, and no housing of dangerous minors. *Id.*

18 With large numbers of children, Homestead does need to ensure that youth
19 care workers have “line of sight” monitoring of all children in order to keep them
20

21
22 ¹ Some of Plaintiffs’ declarations show apparent misunderstandings of the medical care they
23 received at Homestead. *See e.g.*, Pls’ Exh. 24 at ¶ 10 (“In the beginning of July, I was segregated,
24 isolated, and kept alone in an empty room for 24 hours a day for 8 consecutive days.). However,
25 the case file shows that M.G.L., in July, presented to the clinic complaining of fevers, general
26 aches, and pains, and that as a result, the facility doctor recommended isolation. J.G.L. Medical,
27 Defs’ Exh. 1; *see also* Pls’ Exh. 25 (“I have had to see the doctor at Homestead three different
28 times. The doctor has given me medicine, but did not seek my parents’ permission or consent
29 first.”). However, the minor in that declaration received cepacol, robitussin, ibuprofen, and
30 azithromycin. M.Y.R.R. Medical Records, Defs’ Exh. 2.

1 safe and free from abuse of any kind. *Id.* ¶ 34.² Of necessity, children must
2 sometimes stand in line, and they have set times for meals. *Id.* Children receive 8
3 minutes to shower, and showers are permitted every day. *Id.* The no touch policy
4 does not apply to siblings, and many children in ORR custody have suffered a
5 traumatic journey and may not wish to be touched by those they do not know well.
6 *Id.* When ORR learned about just a few workers informing children that their release
7 could be jeopardized for failure to comply with such rules, the program immediately
8 took corrective action. *Id.* Telephone time for UACs at Homestead is in line with
9 ORR Policy at all shelter facilities. *Id.*³ Children also can talk to their attorneys at
10 any time, and the Prison Rape Elimination Act (PREA) hotline is available at all
11 times. *Id.*⁴

12 ² See Defs' Exh. 3 (Pls. Exh. 78, [A.E.V.L.]) (minor declared that UACs are not allowed to leave
13 Homestead and must be with a Youth Counselor who watches them all the time; case file
14 indicates that UAC's sponsor expressed during a family phone session that she did not want the
15 UAC to be unattended in order to ensure the safety of the child).

16 ³ See Def. Exh. 4 (Pls. Exh. 59, [D.G.H.M.]) (minor declared that he was only permitted to speak
17 to his mother for five minutes at a time, but phone records indicate that he spoke with his mother
18 for 10 minutes or longer on at least two occasions).

19 ⁴ A number of Plaintiffs' declarations make assertions about policies and practices at Homestead
20 that do not align with records in the case file. *See, e.g.,* J.Q.P, Pl's Exh 12. (declared that he was
21 not given a list of lawyers, and staff told him there are no lawyers at Homestead, but the case file
22 shows a "Know Your Rights" presentation on June 8, 2018 and a legal screening completed June
23 11, 2018. J.Q.P. Defs' Exh. 5); H.Z.E.R., Pl's Exh. 19 (files show a Know Your Rights screening
24 and a legal screening, H.Z.E.R. Case Review, Defs' Exh. 6); *Compare* Pl's Exh. 48, ¶¶ 12-13 ("I
25 have not spoken to my social worker in 2 weeks . . . I also have not spoken to my counselor in 10
26 days." "I do not know how to make a complaint") with J.N.B. Case Review Notes, Defs' Exh. 7
(showing a Know Your Rights presentation on February 28, 2019 and a legal screening on March
4, 2019, and that a Ms. Hernandez had interacted with J.N.B. just one day prior to his declaration);
Compare Pl's Exh. 79, ¶7 ("I do not know anything about the *Flores* settlement agreement. No
one here has given me information about my release options under *Flores*) with D.N.M.A. Case
Review, Defs' Exh.8 (showing he received a Know Your Rights presentation on 3/4/2019 and
3/5/201); *compare* Pls. Exh. 50, [E.I.G.M.] (declared that he did not "know anything about the
Flores settlement agreement," that "no one here has given me information about my release options
under *Flores*"; and he did "not know how to apply for asylum"), with Defs' Exh. 28 (case file
shows that he received an orientation upon admission to the program and a Know Your Rights
presentation which covered such topics, and that he had access to regular counseling); Defs' Exh.

1 All UAC placed at the Homestead influx care facility are in the custody of
2 HHS. *Id.* ¶ 37. Care and services for the children are provided by non-governmental
3 organizations funded by HHS. *Id.* Homestead operates as a temporary influx care
4 facility on federal property and is therefore not required to obtain a license from the
5 State of Florida. *Id.* However, Homestead's federal contracts subject the facility to
6 the majority of the same requirements that apply to state-licensed residential
7 facilities. *Id.*⁵ In addition, Homestead is subject to all applicable federal regulations
8 and ORR policies and procedures, which in some instances even surpass Florida's
9 requirements (e.g., medical screening and the provision of medical care to youth,
10 reporting of abuse/grievances, and provision of culturally appropriate food). *Id.* All
11 staff at Homestead have undergone FBI fingerprint background checks which
12 provide information to ensure child safety. *Id.*⁶

13
14 9 (Pls. Exh. 54, [D.J.A.D.]) (declared that he was not informed about the Flores settlement
15 agreement, his release options, or his asylum rights; case file indicates, however, that he received
16 his orientation and Know Your Rights presentation when he entered Homestead); Defs' Exh.10
17 (Pls. Exh. 81, [C.A.A.M.]) (declared that he did not know anything about the Flores settlement
18 agreement and that he did not have a lawyer, and that no one gave him information about his
19 release options under Flores; his case file indicates that he received an orientation when he entered
20 Homestead, and a Know Your Rights presentation, where he would have been provided this
21 information); Defs' Exh. 3 (Pls. Exh. 78, [A.E.V.L.]) (minor declared that no one had given her
22 any information about her release options under Flores; her case file indicates that she was given
23 the Know Your Rights presentation, which included information about bond hearings).

24 ⁵ The Homestead influx facility contract meets or exceeds Florida state licensing regulations with
25 respect to requirements for provision of medical services, child needs assessment, education,
26 recreation, meals, snacks and hygiene supplies requirements, counseling services and family
contact. *See* Sualog Decl., ¶ 37 n.9.

⁶ Case files reflect that children expressed positive views of their time at Homestead. *See* H.Z.E.R.
clinical notes, Defs' Exh.6 (Pl's Exh. 19) ("UAC expressed gratitude for assistance received at
Homestead Shelter, stating she feels very blessed, and fortunate to be in U.S. with the opportunity
to be reunified with her family. . . . She stated she is eating and sleeping well. UAC has been
getting along well with peers and has no current conflicts."); K.M.P.R. Case Review Notes, Defs'
Exh 11 ("UAC continues to adapt to our program and reports feeling grateful to not only be here,
but also having the opportunity to learn English."); M.Y.R.R. Clinical Progress Notes, Defs' Exh.
2 ("UAC stated she feels comfortable and grateful for all the help she has received since she
arrived."); B.M.S.C. Clinical Progress Note, Defs' Exh. 12 ("[T]he UAC is well adjusted to life at

1 ORR maintains strict standards for who may be placed in or transferred to
2 Homestead, including that the UAC:

- 3 • Be between 13-17 years of age
- 4 • Speak either English or Spanish
- 5 • Have no known behavioral or medical issues, including contagious
6 diseases or health issues requiring immediate evaluation or medical
7 treatment by a healthcare provider
- 8 • Have no known special needs (mental health or identified disabilities)
- 9 • Not be a danger to self or others
- 10 • Not have a criminal history (i.e., not charged with having committed a
11 criminal offense)
- 12 • Not be involved as a perpetrator or victim of smuggling or trafficking
13 activities
- 14 • Not be subject to a pending age determination
- 15 • Not be part of a sibling group with a sibling(s) age 12 years or
16 younger
- 17 • Not be pregnant or parenting
- 18 • Be medically cleared and vaccinated as required by the Influx Care
19 Facility (for instance, if the Influx Care Facility is on a Department of
20 Defense site):
 - 21 - Have completed the Medical Checklist for Influx Transfers
 - 22 - Have no known medical issues, including contagious diseases or
23 health issues requiring additional evaluation, treatment, or monitoring
24 by a healthcare provider
- 25 • Be able to be discharged from ORR expeditiously
- 26 • Not be involved in an active State licensing, law enforcement, or
Prison Rape Elimination Act (PREA) investigation
- Not be turning 18 years old within 30 days of the transfer
- Not be scheduled to be discharged in 3 days or less
- Not have a pending Home Study
- Not have a current set docket date in immigration court or
State/family court (juvenile included); not have a pending adjustment
of legal status; not have an attorney of record

the shelter, has expressed feeling safe and comfortable in her room assignment. The UAC consistently demonstrated an ability to adjust to new environments.”).

1 *See id.*; *see also* ORR Guide, Section 1.7.2 & 1.7.3. Additionally, children whose
2 potential sponsor is no longer viable and who have no viable sponsor (i.e., a Category
3 4 UAC) are placed on a priority list for transfer to a licensed ORR care provider
4 shelter. Sualog Decl. ¶ 41. Children with various special medical, mental health or
5 other special needs UACs who may be initially placed or transferred to Homestead
6 in error are also placed on a priority list to be transferred to an appropriate licensed
7 facility. *Id.* These placement policies were specifically determined to facilitate
8 expeditious release of children placed at Homestead. *Id.*

9 **B. ORR Releases Minors From Homestead Expeditiously**

10 On July 30, 2019, there were 457 UACs, ages 13-17, residing at Homestead.
11 This number changes on a daily basis as children are referred to HHS, mostly by
12 DHS, and others are released to an appropriate sponsor. *Id.* ¶ 40.

13 Homestead operations are designed to facilitate the safe release of UAC to
14 suitable sponsors as expeditiously as possible. *Id.* ¶ 42. Homestead employs case
15 managers as well as other senior managers comprising a case management team that
16 works closely with ORR federal staff on-site and independent contractors in order
17 to ensure that children are safely and quickly discharged to family members and
18 other appropriate sponsors. *Id.* Each week, case management teams closely review
19 lists of children who have been in care for 45 or more days, and 75 or more days,
20 and discuss how to address any ongoing barriers to their release. *Id.* Homestead also
21 has put in place special teams to assist with expediting the safe release of Category
22 1 children being released to suitable sponsors who are parents or legal guardians,
23 and children who are aging out of ORR care at age 18 within a 60-day time period.
24 *Id.*

25 ORR makes every effort to release children expeditiously directly from
26 Homestead rather than transferring them to a licensed facility after a set period of

1 time, because it is ORR's belief that being transferred to new facilities just as they
2 are to be released, and after they have already developed positive connections with
3 staff and other children in the Homestead facility, would be harmful to the child. *Id.*
4 ¶ 43. A child's case manager – who likely has developed a relationship with the
5 minor and his or her sponsor – would lose control of the reunification case, and the
6 case would move to a new case manager who has not developed such a relationship,
7 likely slowing the release process. *Id.*

8 In the past seven months, ORR has issued several operational directives to its
9 staff and care provider network to facilitate improved discharge rates of UACs from
10 its facilities while maintaining safety measures for each UAC. The directives
11 concern changes made to ORR's sponsor background check policies under a
12 Memorandum of Agreement ("MOA") signed in April 2018 by ORR, U.S. Customs
13 and Border Protection ("CBP"), and U.S. Immigration and Customs Enforcement
14 ("ICE"). *See id.* ¶ 12, Exhibit A. Pursuant to the April 2018 MOA, effective June
15 2018, ORR required all prospective sponsors and all adult household members to
16 provide fingerprints. *Id.* ¶ 14.

17 In the months subsequent to issuing the MOA, as part of a continuing review
18 of the program and operations, including review of an increased median length of
19 care for UACs in grantee facilities, on December 18, 2018, ORR modified its
20 fingerprint policies-and by extension the MOA-with respect to household members.
21 *Id.* ¶ 15, Exhibit B. Subsequent to issuing the December 18, 2018 Operational
22 Directive, adult household members would not uniformly submit fingerprints. *Id.* ¶
23 15. Fingerprints would still be required if a public records check revealed potentially
24 disqualifying factors under ORR policy; there was a documented risk to the safety
25 of the UAC; the child was especially vulnerable; or the case was referred for a home
26

1 study. *Id.* Under the Directive, all potential sponsors would still be required to
2 undergo fingerprinting. *Id.*

3 On March 23, 2019, ORR issued a second operational directive, again
4 modifying its implementation of the MOA. *See id.* ¶ 16, Exhibit C. Specifically,
5 under the March 23, 2019 Operational Directive, Category 1 sponsors would no
6 longer submit fingerprints unless a public records check revealed possible
7 disqualifying information; there was a documented risk to the safety of the child; the
8 child was especially vulnerable; or the case was being referred for a home study.
9 Under the directive, ORR would no longer require confirmation of adult household
10 member immigration status. *Id.* The issuance of the March 23, 2019 Operational
11 Directive essentially brought the policies regarding who must submit fingerprints to
12 the policy positions in place immediately prior to the MOA. *Id.*

13 On June 10, 2019, ORR issued a third operational directive. *See id.* ¶ 17,
14 Exhibit D. This directive revised ORR policy to no longer require verification of
15 immigration status information prior to releasing UACs to sponsors. *Id.* ORR
16 determined that official immigration status results from ICE were not necessary for
17 its purposes, and that relying on ICE to provide this information added unnecessary
18 delays to the release process. *Id.* ORR uses status information only to determine
19 whether to require prospective sponsors to identify alternative caregivers, who
20 would assume their responsibilities in the event the sponsor suddenly becomes
21 unavailable to care for the child. *Id.* ORR determined that it could achieve this
22 purpose safely while re-implementing its pre-MOA practice of relying on
23 prospective sponsors to self-report their status information. *Id.* Under the directive,
24 if the sponsor refuses to provide status information, ORR presumes the sponsor has
25 no status. *Id.* The directive also requires care providers to inform subjects of
26 fingerprint background checks that DHS may not target a subject for immigration

1 enforcement purposes using information from the ORR background check process,
2 unless the subject of the check has been charged or convicted of a felony, other
3 crime, or has certain associations (e.g., gang affiliation).⁷ *Id.*

4 On June 18, 2019, ORR issued its most recent operational directive, which
5 made two changes to its release policies. *See id.* ¶ 18, Exhibit E. First, ORR divided
6 Category 2 sponsors into two subgroups, 2A and 2B,⁸ which resulted in treating adult
7 siblings and grandparents (as well as aunts/uncles and first cousins who previously
8 served as the UAC's primary caregiver) in the same manner as Category 1 sponsors
9 for purposes of fingerprint background checks (i.e., requiring fingerprints only
10 where a public records check reveals possible disqualifying factors under ORR
11 Guide section 2.7.4; there is a documented risk to the safety of the child; the child is
12 especially vulnerable; or the case is being referred for a home study). *Id.* Category
13 2B sponsors continue to have fingerprint background checks as a rule. *Id.*

14 ORR expects that further guidance will be forthcoming regarding length of
15 stay at influx care facilities, and such guidance will be shared publicly. *Id.* ¶ 19.

16 The four operational directives have helped to significantly reduce the median
17 length of care for UAC, even while the number of overall referrals of UACs to ORR
18

19 ⁷ At the time of the operational directive, Congress imposed restrictions on DHS using such
20 background check information for immigration enforcement actions. Congress wrote the
21 prohibition in the DHS budget appropriation, which is in effect through September 30, 2019. *See*
Consolidated Appropriations Act, 2019. Pub. L. 116-6, Division A, Title II, §224.

22 ⁸ Category 2A includes: An immediate relative--a brother; sister; grandparent **or** other close
23 relatives (aunt, uncle, first cousin) who previously served as the UAC's primary caregiver. (This
24 includes biological relatives, relatives through legal marriage, and half-siblings). Category 2B
25 includes: An immediate relative-- including an aunt, uncle, or first cousin who was not previously
26 the UAC's primary caregiver. (This includes biological relatives, relatives through legal marriage,
and half-siblings). *See* ORR Guide, section 2.2.1, available at:
[https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-
section-2#2.2.1](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.1)

1 in fiscal year 2019 are on track to exceed previous records. *Id.* ¶ 20. Notably, at the
2 end of November 2018, the average overall length of care across all ORR care
3 provider facilities was 93 days; in January 2019, after the first operational directive,
4 it was 77 days; and in June 2019 it dropped further to 45 days. For Category 1
5 children, the average length of care in June 2019 for the entire ORR network was
6 even lower at 30 days. *Id.* Children who are placed at the ORR Homestead influx
7 facility are discharged at an even faster rate than children in the regular ORR
8 network. *Id.* ¶ 21. As of May 2019, when the instant Motion to Enforce was filed,
9 the average length of care for children discharged from Homestead was 35 days. *Id.*
10 For Category 1 children, the length of care was just 23 days. *Id.*

11 Congress has provided recent guidance on how ORR should operate with
12 respect to both influxes and three of the above-cited Operational Directives by
13 passing the bipartisan Emergency Supplemental Appropriations for Humanitarian
14 Assistance and Security at the Southern Border Act, 2019, Pub. L. 116-26. *Id.* ¶ 23.
15 That law prohibits the use of funds to reverse “changes in procedures made by
16 operational directives issued to providers by [ORR] on December 18, 2018, March
17 23, 2019, and June 10, 2019,” except where the Secretary determines a change is
18 necessary to prevent a UAC from being placed in danger, and where the Secretary
19 provides a written justification to Congress and the HHS Office of the Inspector
20 General at least 15 days in advance of its implementation. *Id.* (quoting Pub. L. 116-
21 26 at § 403).

22 The appropriations law also contains a number of provisions for influx
23 facilities. *Id.* ¶ 24. An influx facility may only be used when “necessary on a
24 temporary basis due to an influx . . . or an emergency.” *Id.* (quoting Pub. L. 116-26
25 at § 404). Influx facilities in place for more than six consecutive months – except
26 where waivers are granted – must meet all of the requirements for licensed

1 placements in Exhibit 1 of the *Flores* Settlement Agreement that the HHS Secretary
2 determines are applicable to non-State-licensed facilities. *Id.* Influx facilities must
3 also have staffing ratios of one youth care worker for every 8 children during waking
4 hours and one (1) on-duty Youth Care Worker for every sixteen (16) children or
5 youth during sleeping hours, and clinician ratios to children (including mental health
6 providers) as required in grantee cooperative agreements. *Id.*

7 The appropriations law also further mandates that ORR monitoring
8 requirements apply to influx facilities as “set forth in section 5.5 of its Policies and
9 Procedures Guide as of May 15, 2019.” *Id.* ¶ 25 (quoting Pub. L. 116-26 at § 404).
10 The law requires that “for an unlicensed facility in operation for more than three
11 consecutive months, ORR shall conduct a minimum of one comprehensive
12 monitoring visit during the first three months of operation, with quarterly monitoring
13 visits thereafter.” *Id.* Sixty days after an influx facility is operational and monthly
14 thereafter, the HHS Secretary must provide a report to the Committees on
15 Appropriations of the House of Representatives and the Senate that details the total
16 number of children in care at each influx facility, average length of stay and length
17 of care, and for any child that has been at the facility for more than 60 days, their
18 length of stay and reason for delay in release. *Id.* ¶ 26 (discussing Pub. L. 116-26 at
19 § 504).

20 **C. ORR Has Plans To Increase Capacity In Licensed Facilities**

21 In fiscal year 2019, to date, ORR has already broken its previous record
22 number of yearly referrals, and has generally operated at over 90% of its capacity.
23 Sualog Decl. ¶ 44. If such rates continue, in order to meet current and future rates of
24 referrals, ORR will require a significant increase in its bed capacity, from its current
25 capacity of approximately 15,700 beds, which includes approximately 3,800 influx
26 beds, to approximately up to 20,000 permanent capacity beds. *Id.*

1 ORR can increase its bed capacity in two main ways: adding permanent, state-
2 licensed facilities, and opening temporary “influx” facilities, which are not licensed.⁹
3 *Id.* ¶ 45. Once opened, state-licensed facilities operate as part of ORR’s care provider
4 network subject to cooperative agreements, which typically may be renewed every
5 two years. *Id.* ¶ 47. Licensed facilities must meet both ORR and state-licensing
6 requirements, and are subject to routine monitoring from both federal and state
7 officials. *Id.* Although ORR attempts to place UACs in licensed facilities, influx
8 facilities are vital for ORR to maintain the operational flexibility necessary to
9 accommodate sudden surges of UAC referrals, and avoid backups of UACs at the
10 border. *Id.* ¶ 48. In cases such as natural disasters, emergencies, or sudden surges of
11 UACs, where ORR must quickly increase bed capacity, it activates influx facilities.
12 *Id.* These facilities remain in “warm” status when not in use, operating with a
13 minimal staff sufficient to maintain the physical plant, and sufficient to allow quick
14 activation when beds are needed. *Id.* Though not state-licensed, influx facilities must
15 meet all ORR standards. *Id.* The Homestead Influx Facility is required to meet the
16 minimum standards of care described in the Flores Settlement Agreement and the
17 ORR Guide. Further, as noted above ORR policy is detailed regarding who may be
18 placed in an influx facility. *Id.*

19 Opening a permanent, licensed care provider facility requires a significant
20 amount of time and preparation. *Id.* ¶ 46. ORR must issue a funding opportunity
21 announcement (“FOA”) and select a grantee – usually based upon competitive
22 applications process and review by an independent panel of child welfare experts.
23 *Id.* The grantee must then prepare the site of the facility to meet both ORR and state
24 requirements, and obtain a license. *Id.* Even after ORR grants an award, preparations

25
26 ⁹ See ORR Guide, section 1.7, available at: <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7>.

1 for the licensing process typically take a minimum of 90 to 180 days. *Id.* Note that
2 permanent facilities are licensed to provide care and custody for specific
3 demographics of children. *Id.* For example, ORR has specific facilities that are state-
4 licensed to provide care and custody to tender age children, and others specifically
5 licensed to provide care and custody to pregnant UACs, or UACs with babies. *Id.*
6 As a result, placing a UAC within the ORR care provider network requires
7 identifying not just any available bed, but rather an available bed that is licensed to
8 meet the needs of that particular UAC. *Id.*

9 ORR's goal is to main up to 20,000 total permanent capacity beds. *Id.* ¶ 49.
10 To achieve this goal, this fiscal year ORR has issued two FOAs for state-licensed
11 facilities, with the expectation of adding approximately 4,100 new permanent shelter
12 beds. *Id.* ORR plans to issue a third set of FOAs later this summer (in August) related
13 to the renewal of current facilities, and will continue to issue FOAs until it has a
14 sufficient number of beds for its needs. *Id.* A team of ORR project officers is
15 responsible for processing FOAs. An independent panel reviews and scores each
16 application. ORR uses the results of panel reviews to determine which application
17 is awarded a grant. *Id.* Reflecting the urgency of ORR's need for more permanent
18 licensed bed space, the team has not only posted FOAs online, as is typical, but they
19 have also engaged in outreach to other agencies and non-governmental associations
20 to solicit referrals from child welfare organizations who may serve as grantees. *Id.*
21 ORR is also conducting a nationwide search for a suitable site for additional influx
22 capacity. *Id.* ¶ 50. A dedicated team of public health officers at ORR, who are
23 emergency management experts, have inspected over 100 sites, working with other
24 government agencies to identify facilities that can serve as influx facilities. *Id.*

25 Notwithstanding its efforts, ORR faces challenges to adding capacity to
26 ORR's licensed care provider network. *Id.* ¶ 51. For example, local communities

1 may decline to provide sought-after licenses for ORR facilities. *Id.* Additionally, if
2 ORR wants to increase bed space for a specific population, such as tender age or
3 pregnant UACs, the program must rely upon receiving a relevant application—even
4 if there is an immediate need for more of such beds. *Id.* To address these and other
5 challenges, ORR frequently engages local and state governments to educate them
6 about the UAC program. *Id.* It also seeks to cooperate with other government
7 agencies and child welfare organizations, including child welfare accreditation
8 organizations, in order to expand its search for potential grantees. *Id.*

9 **V. ARGUMENT**

10 **A. The Use Of Influx Facilities Is Permitted By The Agreement**

11
12 Homestead is an “influx” facility that necessarily exists to provide ORR with
13 additional capacity for housing minors when the numbers of UACs transferred to its
14 custody by DHS exceed its capacity in licensed shelter facilities. Sualog Decl. ¶¶ 38
15 & 48. ORR is making ongoing and continuous efforts to bring online additional
16 capacity in licensed shelter facilities, but until that process can be finalized ORR’s
17 only option is to use unlicensed influx facilities such as Homestead. *Id.* ¶¶ 44-51.

18 As discussed extensively above, conditions at Homestead comply with the
19 Agreement despite the fact that the facility does not have a state license.
20 Homestead’s federal contracts subject the facility to the majority of requirements
21 that apply to state-licensed residential facilities. *Id.* ¶ 37. In addition, Homestead is
22 subject to all applicable federal regulations and ORR policies and procedures, which
23 in some instances even surpass Florida’s requirements (e.g., medical screening and
24 the provision of medical care to youth, reporting of abuse/grievances, and provision
25 of culturally appropriate food). *Id.*
26

1 Plaintiffs are incorrect in their assertion that Homestead is a “secure” facility
2 as that term is used in the Agreement. A “secure” facility under the Agreement is a
3 term of art. It requires the facility to meet the standards of Paragraph 21, which
4 allows dangerous minors to be placed in a “State or county juvenile detention facility
5 or a secure INS detention facility or INS contracted facility, having separate
6 accommodations for minors.” ORR maintains two secure juvenile detention
7 facilities in its network: Shenandoah Valley Juvenile Center and Yolo County
8 Juvenile Hall, and currently approximately 16 UACs reside in these facilities. Sualog
9 Decl. ¶ 6. Homestead is not a secure juvenile detention facility. Indeed, it is nothing
10 like a juvenile detention facility (e.g., no locked cell pods, no bars, no restrictive
11 housing, and no housing of dangerous minors). *Id.* ¶ 33. Plaintiffs fail to make any
12 allegation that Homestead is akin to juvenile detention. Homestead also does not
13 house the children enumerated in ¶ 21 who would be housed in a secure facility; to
14 the contrary, ORR’s standards for placing children in any influx care facility require
15 that the minor not have been charged with or committed any crimes. *See* §§ 1.7.2.
16 and 1.7.3 of the ORR Policy Guide.

17 Plaintiffs’ assertion that Homestead is “secure” relies on assertions of security
18 based on a layperson’s use of the word “secure.” Given the context of ¶ 21, it is clear
19 that the parties intended the use of “secure” as a term of art and not as a layperson
20 would use the term. Plaintiffs would have the Court believe that the characteristics
21 they allege (locked front doors, close supervision by child care workers, time limits
22 for showers and telephone calls, standing in line, set times for meals, and rules about
23 children touching other children) make Homestead a juvenile detention center under
24 paragraph 21 of the FSA, but that is hardly the case. It is common sense to expect
25 that the conditions that Plaintiffs describe—to the extent that their descriptions are
26

1 accurate—are found in facilities that do not rise to the level of juvenile detention.¹⁰
2 Defendants note that children stand in line in schools, and assert that time limits on
3 showers or telephone calls do not make a facility akin to juvenile detention.
4 Moreover, close supervision and clear rules guard against abuse in a facility that
5 contains a large number of minors who do not know each other well, who are
6 separated from family members, and who may have suffered from trauma before
7 coming to Homestead.¹¹ Plaintiffs also fail to acknowledge that ORR is prohibited
8 from releasing children on their own recognizance. 6 U.S.C. § 279(b)(2)(B). And
9 finally, the mere fact that Homestead is surrounded by a fence and has in place
10 policies designed to ensure safety does not transform it into a juvenile-detention
11 facility or a “secure” facility within the meaning of the Agreement.

12 Defendants further note that the Agreement itself clearly distinguishes
13 between influxes and emergencies on the one hand, and secure facilities on the other.
14 Paragraph 12 of the Agreement delineates exceptions to immediate placement in a
15 licensed facility. Emergency or influx is a specific, separately-listed, exception (3)
16 to the placement requirement. Secure detention under Paragraph 21 is its own
17 numbered exception, as well, and is listed as exception (1). Thus, the settlement
18 agreement not only anticipates influx-care facilities, but places them in a distinct
19 category of their own. They are neither licensed facilities under the Agreement, nor
20 are they “secure” facilities under Paragraph 21. Having negotiated such a distinction

21 ¹⁰ Indeed, one alleged characteristic cited by Plaintiffs – children being told that there will be
22 consequences for running away – is in fact reflective of a provision of the Agreement to which
23 Plaintiffs explicitly agreed. Specifically, the Agreement makes clear that a minor being an “escape
24 risk,” makes him or her eligible for transfer to a juvenile detention center. Agreement ¶ 21.

25 ¹¹ Plaintiffs at their footnote 5 cite to a Florida “Child Care Facility Handbook;” however, such
26 handbook does not appear to apply to residential operations in Florida. *See* § 1.1. of the handbook,
defining “child care” as “the care, protection, and supervision of a child, for a period of less than
24 hours a day on a regular basis, which supplements parental care, enrichment, and health
supervision for the child, in accordance with his or her individual needs, and for which a payment,
fee, or grant is made for care.”

1 in the Agreement, Plaintiffs now seek to abrogate it and ask the Court to consider
2 Homestead secure under Paragraph 21 based only on assertions grounded in a
3 layman's understanding of the term. This is improper.

4 The current number of minors available for placement into a licensed facility
5 greatly exceeds the 130 necessary to trigger the influx provisions of the Agreement.
6 While Plaintiffs appear to complain about the fact that Homestead is unlicensed,
7 they entirely fail to acknowledge that ORR's available licensed beds and efforts to
8 open still more licensed facilities more than comply with what the parties agreed
9 was necessary under the Agreement in the event of an influx. The intent of the parties
10 in that regard may be determined by review of Exhibit 3 to the Agreement.

11 Exhibit 3 makes clear that the parties never expected that the government
12 would be dealing with the numbers of minors available for placement into its
13 facilities as it is facing today. In fact, the parties anticipated that the maximum
14 number of minors available for placement, even in an influx, was unlikely to exceed
15 210. *See* Agreement, Exhibit 3 (requiring that the government "establish and
16 maintain an Emergency Placement List of at least 80 beds at programs licensed by
17 an appropriate state agency that are potentially available to accept emergency
18 placements. These 80 placements would supplement the 130 placements that the INS
19 normally has available, and whenever possible, would meet all standards applicable
20 to juvenile placements the INS normally uses."). The parties then further agreed that
21 in the event that the number of children available for placement exceeded 210, then
22 the government is obligated to "locate additional placements through licensed
23 programs, county social services departments, and foster family agencies." *Id.*
24 Beyond that, each year, the government must "reevaluate the number of regular
25 placements needed for detained minors to determine whether the number of regular
26 placements should be adjusted to accommodate an increased or decreased number

1 of minors eligible for placement in licensed programs. However, any decision to
2 increase the number of placements available shall be subject to the availability of
3 [agency] resources.” *Id.*

4 As described above, ORR does reevaluate its needs for regular licensed
5 placements, and is working to open and maintain approximately 20,000 licensed
6 beds throughout its network of facilities in the coming months. ORR’s efforts to do
7 so far exceed its obligations under Exhibit 3 of the Agreement to maintain access to
8 210 licensed beds. Notably, the advent of the TVPRA means that ORR is absolutely
9 required to take unto custody UACs who are transferred to it from DHS, and further
10 imposes requirements on ORR before it can release those minors to sponsors. 8
11 U.S.C. § 1232. Thus, ORR has absolutely no flexibility in its need to be able to house
12 minors who are transferred to its custody, even when it runs out of licensed beds
13 where those UACs can be housed. Nothing in the Agreement can or should be read
14 to prohibit ORR from meeting that need by “locat[ing] additional beds” that “meet
15 all standards applicable to juvenile placements the INS normally uses” as it has done
16 with the Homestead facility. Agreement, Exhibit 3. Where ORR does not have the
17 licensed beds to meet demand—despite vastly exceeding its obligation to maintain
18 210 licensed beds under the Agreement—and where it has shown it is earnestly
19 working to obtain such beds, ORR’s use of the Homestead facility to house minors
20 should be found to be in substantial compliance with the Agreement.

21 **B. The Agreement Does Not Require That ORR Transfer UACs**
22 **From Homestead To A Licensed Facility On An Arbitrary**
23 **Timeline**

24 It should be noted that Plaintiffs appear to concede the necessity of influx
25 shelters, as they offer no viable alternative for ORR to comply with its obligations
26 under the TVPRA while dealing with the unexpected transfer of an unprecedented

1 numbers of UACs to its custody in a manner that exceeds its available licensed
2 capacity. However, Plaintiffs then assert that in order to comply with the Agreement
3 ORR should apply a policy of transferring minors who are housed at Homestead into
4 licensed facilities at an arbitrary time period, without regard for the potential damage
5 such transfers could do to the minors themselves, and to ORR's efforts to release
6 them expeditiously to a sponsor. *See* Motion at 28, ¶ 2.

7 To start, Plaintiffs arbitrarily ask this Court to apply to Homestead the same
8 twenty-day standard for judging the timeliness of release that the Court applied in
9 2015 with regard to ICE family residential centers. However, the Court's August
10 2015 order was based on an entirely distinct set of facts and circumstances that
11 applied to accompanied minors, whose release was premised on the timing of their
12 credible fear proceedings. *See* ECF No. 189 at 10. Those facts are wholly
13 inapplicable to the case at hand, where the release of minors from Homestead
14 depends on ORR's ability to locate and evaluate the suitability of potential sponsors.
15 The Court should decline to apply this inapplicable 20-day standard to its
16 determinations of what the Agreement might require with regard to the release of
17 UACs from Homestead.

18 Moreover, in the vast majority of cases, transferring a UAC from Homestead
19 to a licensed facility after the child has been at Homestead for 20 days would be
20 more harmful than beneficial to the child. *Id.* ¶ 43. As of May 2019, when the instant
21 Motion to Enforce was filed, the average length of care for children discharged from
22 Homestead was 35 days. *Id.* ¶ 21. For Category 1 children, the length of care was
23 just 23 days. *Id.* Thus, in a significant number of cases transferring a child at the 20-
24 day mark would cause him or her to be transferred from one facility to another just
25 as his or her release to a sponsor was being finalized. Being transferred to new
26 facilities just as they are to be released, and after they have already developed

1 positive connections with staff and other children in the Homestead facility, would
2 be harmful to children. *Id.* ¶ 43. Moreover, a child's case manager – who likely has
3 developed a relationship with the minor and his or her sponsor – would lose control
4 of the reunification case, and the case would move to a new case manager who has
5 not developed such a relationship, likely slowing the release process. *Id.*

6 As discussed more fully below, rather than focusing on transferring UACs
7 from Homestead into other facilities, it is ORR's primary goal to release UACs from
8 Homestead to sponsors as expeditiously as possible. To that end, ORR has
9 specifically limited the categories of UACs who may be placed at Homestead, so
10 that UACs who might be more difficult to place with sponsors are not housed there.
11 *See id.* ¶ 41 (citing ORR Guide, Section 1.7.2 & 1.7.3). ORR does at times transfer
12 certain UACs to other facilities from Homestead, but using criteria that are tied to
13 the needs of the UACs, and not to an arbitrary deadline imposed by Plaintiffs. Thus,
14 children who ORR initially believed could be placed with a sponsor, but who are
15 determined to no longer have any viable sponsor available, are placed on a priority
16 list for transfer to a licensed ORR care provider shelter. *Id.* Likewise, UACs with
17 various medical, mental health or other special needs who may initially be placed at
18 or transferred to Homestead in error are placed on a priority list to be transferred to
19 an appropriate licensed facility as soon as such placements become available. *Id.*
20 This practice ensures that while expeditious release to a sponsor is the priority,
21 children who cannot be released expeditiously to a sponsor will be transferred out of
22 Homestead and into a licensed facility. It also balances the need for expeditious
23 release with ORR's obligation to ensure the safety of UACs upon release, and
24 considers the reality of the needs of UACs in ORR custody in making release and
25 transfer decisions. The Court should therefore find that it does not violate the
26 Agreement, and should decline to adopt Plaintiffs' arbitrary proposal.

1 **C. ORR Complies With The Agreement Because It Releases UACs**
2 **From Homestead To Sponsors As Expeditiously As Possible**

3 Ultimately, Plaintiffs' Motion should be denied because it is incorrect in its
4 assertion that ORR is not expeditiously releasing UACs from Homestead. This Court
5 has already interpreted the Agreement to read "as expeditiously as possible," to rely
6 on good faith and due diligence by Defendants. *Flores v. Lynch*, 212 F. Supp. 3d
7 907, 914 (C.D. Cal. 2015), *aff'd in part, rev'd in part and remanded*, 828 F.3d 898
8 (9th Cir. 2016). Here, ORR has exercised such good faith and due diligence, and has
9 taken the necessary steps to ensure that UACs at Homestead are released to sponsors
10 in a manner that is expeditious, while also ensuring the safety of UACs with their
11 sponsors upon release.

12 Plaintiffs have submitted a number of declarations which they argue support
13 the view that ORR fails to take sufficient steps to release UACs expeditiously from
14 care at Homestead. The case files for many of these declarants, however, tell a
15 different story of the various efforts made by ORR to release children to suitable
16 sponsors as quickly as possible. For instance, several minors were reunified with
17 parents or other relative sponsors shortly after providing their declarations. *See* Defs'
18 Exh. 3 (Pls. Exh. 56, [J.A.P.L.]) (minor was reunified with his brother after only 9
19 days, the day before he turned 18); Defs' Exh. 14 (Pls. Exh. 49, [H.S.C.]) (minor was
20 reunified with his mother within three weeks); Defs' Exh. 10 (Pls. Exh 81,
21 [C.A.A.M.]) (minor was released to the custody of his mother after less than a
22 month); Defs' Exh. 15 (Pls. Exh. 53, [S.N.N.]) (minor was released to the custody
23 of his uncle within about five weeks of his arrival at Homestead); Defs' Exh. 16 (Pls.
24 Exh. 76, [M.N.T.E.]) (minor was released to the custody of his brother within about
25 five weeks); Defs' Exh. 17 (Pls. Exh [J.J.G.A.]) (ORR expedited fingerprinting
26 process for minor's sponsor (cousin) so that he would be released before aging out

1 of care, and minor was released a few days after submitting his declaration); Defs’
2 Exh. 9 (Pls. Exh 54, [D.J.A.D.]) (minor was released to the custody of his uncle after
3 being at Homestead about six weeks); Defs’ Exh. 11 (Pls’ Exh. 22 [K.M.P.R.])
4 (declarant stated that she was “told that the government would let us know by July
5 26, 2018, whether I would be released to her. But that day passed, and I haven’t
6 heard anything,” but records reflect that case manager sent documents to distant
7 cousin on 5/25/2018, just one day after admission, and K.M.P.R. released less than
8 one week after her declaration, on August 7, 2018); Defs’ Exh. 18 (Pls’ Exh. 63
9 [L.M.C.N.]) (less than a week after the child’s declaration Homestead discharged
10 the minor, and he was in care less than a month, from 3/14/2019 to 4/6/2019); Defs’
11 Exh. 19 (Pl’s Exh. 68 [I.P.F.D.]) (Discharged less than a month after entry: entered
12 Homestead 3/11/2019 and discharged 4-6-2019); Defs’ Exh. 20 (Pl’s Exh. 73
13 [R.A.F.S.]) (shows minor who feared he would be at Homestead 15 more days was
14 discharged three days after the declaration, on 3/28/2019, and about a month after
15 entering Homestead on 2/22/2019); Defs’ Exh. 21 (Pl’s Exh. 84 [A.S.F.O]) (Minor
16 who expressed fear that if “we get a report, I will have to stay at Homestead for 25
17 more days” released shortly after the date of declaration, on 4/16/2019 and less than
18 a month after entering Homestead on 3/18/2019).

19 In other cases, somewhat longer lengths of stay at Homestead and delays in
20 the release process were explained by potential sponsors’ lack of follow through in
21 submitting necessary documentation, repeated difficulties in the identification of a
22 suitable sponsor, and/or the need for a TVPRA-mandated home study where a minor
23 disclosed past abuse. *See* Defs’ Exh. 22 (Pls. Exh. 52, [D.A.C.]) (minor’s mother
24 needed to provide second proof of address after moving, and a second alternative
25 caregiver had to be approved after the first one (his grandmother), had to return to
26 their home country for medical treatment; minor disclosed past physical abuse which

1 necessitated a TVPRA home study; minor was released from Homestead to his
2 mother just two days after he signed his declaration); Defs' Exh. 23 (Pls. Exh. 74,
3 [E.E.M.R.]) (minor's release was delayed because it took about a month for his
4 family to identify a viable sponsor, and then that sponsor did not attend her
5 fingerprinting appointment; once his family identified another potential sponsor, he
6 was reunified with that individual within less than a month); Defs' Exh. 24 (Pls. Exh.
7 55, [H.M.A.L.]) (minor's release was delayed because the first sponsor his family
8 identified (a pastor) did not provide necessary information and fell out of
9 communication with ORR; his second potential sponsor, a cousin, could not provide
10 proof of relationship; once his family identified a third sponsor, ORR reunified him
11 within about six weeks); Defs' Exh. 25 (Pls. Exh. 64, [N.E.A.M.]) (minor declared
12 that her mother had submitted all the necessary paperwork at the time of her
13 declaration; the case file indicates, however, that the mother had not submitted proof
14 of address or proof of income at that time, and that once the paperwork was actually
15 received, the minor was released three days later); Defs' Exh. 26 (Pls. Exh. 51,
16 [G.N.H.P.]) (minor's release was delayed because his first potential sponsor decided
17 not to move forward and his second potential sponsor could not prove their
18 relationship; once a third potential sponsor was identified, minor was released to
19 within five weeks); Defs' Exh. 27 (Pls. Exh. 85, [A.Q.N.]) (delays in release were
20 caused because her sponsor (uncle) had no form of identification and had to get an
21 ID from the Guatemalan consulate before proceeding); Defs' Exh. 28 (Pls. Exh. 50,
22 [E.I.G.M.]) (release process was delayed somewhat as the sponsor collected required
23 documents, including documents from his country of origin); Defs' Exh. 29 (Pls.
24 Exh. 57, [C.G.C.A.]) (declared that he was not able to be released to potential
25 sponsor because they don't share the same last name, the sponsor does not send him
26

1 money and because of a lack of a family relationship; the case file indicates that the
2 potential sponsor denied knowing the minor); Defs' Exh. 30 (Pls. Exh. 47,
3 [A.S.H.S.]) (declared that he was told by his case manager that he needed photos
4 documenting his relationship with his uncle in order to be released to his custody;
5 however, case file records indicate that he was not released to initial sponsor because
6 of domestic violence charges against him); Defs' Exh. 31 (Pls. Exh. 27, [M.G.P.T.])
7 (minor's case manager was eventually able to locate a sponsor for him after many
8 delays cause by his lack of relationship to initial candidates for sponsorship); Defs'
9 Exh. 32 (Pls' Exh. 23, [K.D.L.]) ("About eight days after arriving to Miami, I was
10 finally taken to meet my case manager and counselor," but notes show that three
11 days after arrival the minor met with a clinical counselor, with weekly visits planned
12 thereafter; as of 8/9/2018, proof of address was still pending from the sponsor); Defs'
13 Exh. 33 (Pl's Exh. 71 [K.D.G.C.]) (Sponsor presented with misdemeanor DUI
14 offense and court documents were needed, which took five weeks for receipt).

15 Also impacting the release of certain minors from Homestead was a physical
16 disability or a psychiatric illness, which ORR needed to take into account in safely
17 releasing them to an appropriate sponsor. For example, before M.A.J., who was
18 discovered to be legally blind due to a severe vision impairment, could be released
19 to his father, a home study revealed that safety interventions to protect him were
20 needed in the home. Defs' Exh. 34 (Pls. Exh. 46, [M.A.J.]).¹² Notably, M.A.J. had
21

22
23 ¹² Contrary to M.A.J.'s declaration, *see* Pl's Exh. 46, it was not Plaintiffs' intervention that led to
24 M.A.J.'s release; rather, they happened to inquire about the status of his release at about the same
25 time that his father documented that he had made needed repairs to make his home safe for M.A.J.
26 Defs' Exh. 34. Moreover, despite claims in his declaration that he was the victim of repeated
assaults by other children at Homestead, his case file revealed only one incident of another child
hitting him and suggesting that the particular child had hit him before, and there were no other
indications that he was unhappy or uncomfortable in ORR custody. *Id.*

1 his first doctor's appointment of his life while in ORR custody at Homestead, and
2 ORR ensured that he received the proper special glasses and assistive devices
3 necessary for his disability after releasing him to his father. *Id.* Another child,
4 D.M.H., who was mentioned in the Frye Decl., Pls. Exh. 1, at ¶ 24, showed signs of
5 psychiatric illness only after having been placed at Homestead and thus needed to
6 be stabilized with appropriate mental health treatment before she could be released
7 to her mother safely with post-release services. Defs' Exh. 35 [D.M.H.].

8 Additionally, some child declarants also alleged that they did not regularly
9 meet with their case managers or social workers at Homestead and were unaware of
10 the status of their sponsorship process, whereas the case file information did not
11 support such allegations. Defs' Exh. 36 (Pls. Exh.80, [Z.P.M.C.]) (declared that she
12 had not yet met with a case manager after a week at Homestead but case file shows
13 the case manager met with her two days after her arrival); Defs' Exh. 37 (Pls. Exh.
14 75, [R.F.S.O]) (declared that his mother submitted all the paperwork to be his
15 sponsor but that no one at Homestead explained the process to him; his case file
16 shows that the case manager met with him three times before he submitted his
17 declaration who explained the reunification process to him); Defs' Exh. 38 (Pls. Exh.
18 83, [H.A.P.C.]) (declared that he had not had a meeting with his social worker yet
19 and he had been at Homestead for 9 days; his case file shows that four days after his
20 arrival, he met with his case manager who explained the requirements for
21 reunification, and on that same day, his case manager spoke to his sponsor and sent
22 the family reunification packet); Defs' Exh. 24 (Pls. Exh. 55, [H.M.A.L]) (declared
23 that he had not heard anything about his case, but his case file indicates that his case
24 manager met with him to discuss his reunification status just a few days before he
25 signed the declaration); Defs' Exh. 24 (Pls. Exh. 86, [K.S.M.B.]) (declared that she
26

1 was never informed about when she might be released, but the case file shows that
2 she received an orientation, counseling, and a Know Your Rights presentations
3 within days of arrival; and that her case manager explained the reunification process
4 to her mother within a week of her arrival); Defs' Exh. 40 (Pls. Exh. 77, [M.U.L.])
5 (minor expressed confusion about delays, but, his case file shows the case manager
6 discussed the reunification process a few days after his arrival); Defs' Exh. 28 (Pls.
7 Exh. 50, [E.I.G.M]) (minor declared that he was unable to speak with a social worker
8 who could work on his release for 15 days after his placement at Homestead; his
9 case file indicates that he had his first face-to-face contact with a case manager two
10 days after his arrival); Defs' Exh. 9 (Pls. Exh. 54, [D.J.A.D.]) (declared that he had
11 spoken with a social worker two times about how he could leave Homestead; this
12 case management schedule was consistent with standard ORR practice, and with
13 D.J.A.D.'s Individual Service Plan; D.J.A.D. also had the opportunity to speak with
14 a clinician); Defs' Exh. 31 (Pls. Exh. 27, [M.G.P.T.]) (minor declared that at the time
15 of his declaration his case had not been "opened" and that he does not know when
16 he will be released to his cousin's care or where he will be sent next; case file records,
17 however, indicate that his case manager met with him five times prior to assist in the
18 location of a sponsor). In one case, ORR took steps to ensure that the minor could
19 establish rapport with his father who had already been living in the United States for
20 13 years before his child arrived, prior to releasing the minor to the father. Defs'
21 Exh. 41 (Pls. Exh. 26, [M.A.G.M.]) (although minor declared that he had talked to
22 his father just once since arriving at Homestead, case records reflect that multiple
23 family counseling sessions were held to help the minor to develop a relationship with
24 his father).

1 Plaintiffs' Motion also ignores the steps that have been taken by ORR to
2 decrease its release times even in advance of Plaintiffs' filing.¹³ As discussed above,
3 at the time of Plaintiffs' filing, ORR had already issued two operational directives
4 designed to reduce the time that UACs spend in ORR custody, and that specifically
5 address claims contained in Plaintiffs' Motion. Sualog Decl. ¶¶ 15-16. Moreover,
6 soon after Plaintiffs' filing, Defendants issued two additional operational directives
7 for this purpose. *Id.* ¶¶ 17-18. Notably, Plaintiffs made no mention of the effects of
8 any of these directives in their Motion. Moreover, Plaintiffs finally lodged their
9 Motion on the record on June 28, 2019, after all of these operational directives were
10 already in place, but made no effort to address these significant changes or the effect
11 that these changes have on their claims.¹⁴

12 In fact, the four operational directives have helped to significantly reduce the
13 median length of care for UAC, even while the number of overall referrals of UAC
14

15 ¹³ A number of Plaintiffs' declarations reflect delays associated with increased volumes of
16 fingerprinting, despite the fact that these delays have now been ameliorated by the operational
17 directives. *See e.g.*, Pl's Exh. 28 ("I was told by my case manager that my aunt must get her finger
18 prints done); Exh. 37 ("My uncles have completed all the paperwork and submitted their
19 fingerprints. My uncles have both submitted the finger prints but only one has come back so far.");
20 Exh. 38 ("It is my understanding that not only my uncle, but also his wife, must submit their
21 fingerprints before I can be released to my uncle. I am told that my uncle and his wife submitted
22 their fingerprints at the same time. For reasons that I do not understand, my uncle's fingerprints
23 have been received and processed by the government, but my aunt's fingerprints have not."); Exh.
24 41, ¶7 ("Now, my social worker has told me that we are waiting for my aunt's fingerprints to arrive
25").

26 ¹⁴ Plaintiffs appear to contend that asking DHS to process prints at all is a violation of the
Agreement, but Plaintiffs provide no support for this assertion. In fact, relying on another agency
to help HHS process prints, or share database information about sponsors, in and of itself, does not
violate the settlement agreement, and can help ORR access information about potential sponsors
more quickly. Moreover, 8 USC § 1232(c)(3)(C) specifically directs DHS to "provide
information" to ORR from "appropriate Federal, State, and local law enforcement and immigration
databases," that is "necessary to conduct suitability assessments." It also should be noted that at
the time the Motion was filed, Congress had already passed section 224 of the DHS Appropriations
Act, which restricted DHS from using appropriated funds for bringing immigration enforcement
actions against sponsors and potential sponsors based on information shared by ORR.

1 to ORR in fiscal year 2019 are on track to exceed previous records. *Id.* ¶ 20. At the
2 end of November 2018, the median length of care was 93 days; in January 2019,
3 after the first operational directive, it was 77 days; and in May 2019 it dropped
4 further to 45 days. For Category 1 children, the average length of care in June 2019
5 for the entire ORR network was even lower at 30 days. *Id.* Notably, children who
6 are placed at the ORR Homestead influx facility are discharged at an even faster rate
7 than children in the regular ORR network. *Id.* ¶ 21. As of May 2019, when the instant
8 Motion to Enforce was filed, the average length of care for children discharged from
9 Homestead was 35 days. *Id.* For Category 1 children, the length of care was just 23
10 days. *Id.*¹⁵

11 Moreover, to the extent that Plaintiffs appear to be challenging the suitability
12 criteria maintained by ORR to ensure the safety of UACs upon release, Plaintiffs are
13 ignoring this Court’s own guidance on that topic. As recently as July 30 of last year,
14 the Court found that “ORR does not violate the *Flores* Agreement merely because it
15 unilaterally determines the suitability criteria for potential sponsors. Because
16 Paragraph 17 provides a non-exhaustive list of considerations relevant to ORR’s
17 ‘positive suitability’ assessments, it impliedly gives ORR the authority to prescribe
18 additional factors.” *Flores v. Sessions*, No. 85-4544 DMG (C.D.Cal. Jul.30, 2018)
19 at 25. The Court further found that ORR policies on release “appear to be reasonably
20

21 ¹⁵ In complaining of prolonged custody at Homestead, Plaintiffs rely on many declarations that
22 were obtained more than a year ago (*see* Plaintiffs’ Exhs. 11-34), and that involved children
23 separated from parents and legal guardians pursuant to the now-repealed zero tolerance policy.
24 These cases involved considerations (such as receiving consent from the separated parent as to
25 whether the child should be released to another sponsor, reunified with the separated parent in
26 family residential centers, or reunified with the separated parent for purposes of removal) that
caused delays that are unique to those cases. *See e.g.*, Plaintiffs’ Exhs. 11, 13-20, 22-23, 25, 27-
29, 31-45 (separated from father); 30 (separated from father and seeking voluntary departure).
Such declarations should not be treated by the Court as representative of the universe of minors in
custody at Homestead.

1 calculated to protect Class Members from ‘harm or neglect’ and to ensure that they
2 have an adequate ‘standard of care.’” *Id.* at 26.¹⁶ Plaintiffs have provided no basis
3 for the Court to find otherwise here, and therefore there is good reason for the Court
4 to deny Plaintiffs’ motion.

5
6 ///

7 ///

8 ///

18 ¹⁶ Plaintiffs complain that ORR’s practice of obtaining a birth certificate for a UAC prior to release
19 causes unnecessary delay in release, but provide no examples of any actual delays resulting from
20 this process. ORR is not aware of any situations where obtaining the birth certificate for a UAC
21 has delayed release. ORR relies on the birth certificate to verify the identity of the UAC as well as
22 to determine the relationship to the potential sponsor. *See* 8 U.S.C. § 1232(c)(3)(A) (requiring
23 ORR to determine relationship between the sponsor and the UAC). Indeed, ORR’s understanding
24 is that Northern Triangle countries have made obtaining the birth certificate from the consulate or
25 Embassy a straightforward process. Likewise, Plaintiffs complain about ORR’s requirement that
26 sponsors attend a legal orientation program prior to release of UACs to their custody, but Plaintiffs
ignore the fact that requiring attendance at such a program is a specific provision of the TVPRA.
See 8 U.S.C. § 1232(c)(4) (“The Secretary of Health and Human Services shall cooperate with the
Executive Office for Immigration Review to ensure that custodians receive legal orientation
presentations provided through the Legal Orientation Program administered by the Executive
Office for Immigration Review. At a minimum, such presentations shall address the custodian’s
responsibility to attempt to ensure the child’s appearance at all immigration proceedings and to
protect the child from mistreatment, exploitation, and trafficking.”).

1 **VI. CONCLUSION**

2 For the foregoing reasons, the Court should deny Plaintiffs' Motion.

3
4 DATED: August 2, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, I served the foregoing pleading on
all counsel of record by means of the District Clerk's CM/ECF electronic filing
system.

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